IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

No. 813.

LOCAL 24 of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, and KENNETH BURKE, President and Business Agent of Local 24,
Petitioners,

vs.

REVEL OLIVER and A. C. E. TRANSPORTATION COMPANY, INC., and INTERSTATE TRUCK SERVICE, INC.,
Respondents.

REPLY BRIEF

In Support of Petition for Writ of Certiorari to the Supreme Court of Ohio and the Court of Appeals of Summit County, Ohio.

Respondents, in their joint brief in opposition, appear to place principal reliance upon two separate contentions. First, Respondents urge that Sections 4 and 5 of Article XXXII, by their terms, do not require contracting carriers to use only their own employees in the operation of leased

equipment. Respondents conclude that this Court, therefore, could not have held, in its opinion, that a contract clause having such effect was within the ambit of federally protected bargaining. In short, Respondents urge that the issue was never in the case.

Secondly, Respondents apparently argue that the courts below properly retained jurisdiction to enjoin future interference with Respondent Oliver's leases, except to the extent that Respondent Oliver actually drove. If Respondents' first contention is accepted, *arguendo*, it must be concluded that Respondents' second argument amounts to a contention that the courts below had authority to enjoin Petitioners from bargaining for a clause requiring the Respondent carrier to use only its own employees in the operation of leased equipment.

Assuming, without agreeing with, the correctness of the above interpretation of the contract and decree below, it is submitted that the courts below have denied to Petitioners rights guaranteed under federal law. Respondents' contrary assertion notwithstanding, Petitioners have consistently maintained that *all drivers* of leased equipment must be, under the contract, employees of the carrier.* *However, for purposes of this case it is immaterial to determine whether the decree enjoins provisions of an existing contract which require all drivers to be employees of the carrier or whether the decree enjoins, as Respondents assert, Petitioners from demanding such a clause.* For Petitioners have a federally protected right to both bargain for and to embody in a written agreement

---

* E. g. Petitioners' brief on the merits, filed in this Court, pg. 2, expressly states with reference to section 4 of Article XXXII:

> "This Section is one of the few which directly affects Revel Oliver both as a driver of his own equipment and as a lessor of other equipment. * * * Section 4 is the transportation industry's subcontracting clause"

a contract clause which requires the carrier to use only his own employees in the operation of equipment leased to the carrier. Such a clause is no more than a traditional subcontracting clause and is therefore within the area of mandatory bargaining. The uniform course of federal decision supporting this proposition is discussed on pages 26 through 28 of Petitioners' brief on the merits and on page 9 of Petitioners' instant petition. Hence, it is not discussed here.

Petitioners are again obliged to point out, in view of Respondents' brief in opposition, that the original litigation focused upon the Petitioners' right to negotiate minimum mileage rates for the use of leased equipment. Section 12 (b) of Article XXXII establishes such rates for "leased equipment owned and driven by the owner driver . . ." (Ex. 1, pg. 41, R. 144). Such minimum lease rates apply to Respondent Oliver only when he is driving his own equipment. The mileage rate paid to him for the use of equipment which he owns but does not drive is not controlled by the contract. And Petitioners do not claim an interest in such rates. Petitioners do assert, however, that, under Section 4 of Article XXXII, the driver of such leased equipment is required to be an employee of the carrier.

In conclusion, it is submitted that, even accepting Respondents' view of the case, the courts below have trespassed upon the federal domain. For in the Respondents' view, Petitioners are prohibited, under the decree, below, from *negotiating for* a subcontracting clause. As this Court held, discussing the effects of subcontracting practices, "certainly bargaining on this subject through their representatives was a right of the employees protected by Section 7 of the Act." *Teamsters Local Union 24 v. Oliver*, 358 U. S. 283, 295.

For the foregoing reasons the petition for a writ of certiorari should be granted.

Respectfully submitted.

DAVID PREVIANT,
511 Warner Theatre Building,
Milwaukee 3, Wisconsin.

ROBERT C. KNEE,
Winters Bank Building,
Dayton, Ohio,

BRUCE LAYBOURNE,
Second National Building,
Akron, Ohio,
Counsel for Petitioners.

Of Counsel:
GOLDBERG, PREVIANT & COOPER,
DAVID LEO UELMEN,
HUGH HAFER.

FILE COPY

Office Supreme Court, U.S.
FILED
JUN 10 1960
JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1959.

No. 813.

LOCAL 24 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, AND KENNETH BURKE, PRESIDENT AND BUSINESS AGENT OF LOCAL 24,

Petitioners,

vs.

REVEL OLIVER AND A. C. E. TRANSPORTATION COMPANY, INC. AND INTERSTATE TRUCK SERVICE, INC., and INTERSTATE TRUCK SERVICE, INC.,

Respondents.

PETITION FOR REHEARING.

CHARLES R. IDEN,
2200 First National Tower,
Akron 8, Ohio,
Counsel for Interstate Truck Service, Inc., Respondent.

BERNARD J. ROETZEL,
901 First National Tower
Akron 8, Ohio,
Counsel for Revel Oliver, Respondent.

THE GATES LEGAL PUBLISHING CO.; CLEVELAND, OHIO—MAIN 1-8847